

REMARKS

Claims 53-58, 71-73, and 86-94 are pending in the present application. The examiner stated that further restriction is required (Office Communication, p. 2):

Group I, claim(s) 53-58, 71-73, and 86-94, drawn to a method of eliciting an immune response against an A/E pathogen, reducing colonization or shedding of an A/E pathogen in an animal comprising administering to the animal an effect amount of the composition comprising a polypeptide which comprises an amino acid sequence substantially identical to the sequence of SEQ ID NO: 22-24 or fragment or variant thereof or a cell culture supernatant which comprises a polypeptide which comprises an amino acid sequence substantially identical to the sequence of SEQ ID NO: 22-24 or fragment or variant thereof.

Group II, claim(s) 53-58, 71-73, and 86-94, drawn to a method of eliciting an immune response against an A/E pathogen, reducing colonization or shedding of an A/E pathogen in an animal comprising administering to the animal an effect amount of the composition comprising a nucleic acid molecule which comprises a nucleotide sequence substantially identical to the sequence of SEQ ID NO: 1-3 or fragment or variant thereof or a nucleic acid molecule encoding a polypeptide which comprises an amino acid sequence substantially identical to the sequence of SEQ ID NO: 22-24 or fragment or variant thereof.

The examiner also required species election:

Group I

Species of the invention drawn to administering:

- a) SEQ ID NO: 22 or fragment or variant thereof
- b) SEQ ID NO: 23 or fragment or variant thereof
- c) SEQ ID NO: 24 or fragment or variant thereof

Group II

Species of the invention drawn to administering:

- a) SEQ ID NO: 1 or fragment or variant thereof and nucleic acid molecule encoding SEQ ID NO: 22 or fragment or variant thereof

- b) SEQ ID NO: 2 or fragment or variant thereof and nucleic acid molecule encoding SEQ ID NO: 23 or fragment or variant thereof
- c) SEQ ID NO: 3 or fragment or variant thereof and nucleic acid molecule encoding SEQ ID NO: 24 or fragment or variant thereof

Applicant elects Group I drawn to claims 53-58, 71-73, and 86-94. Applicant further elects SEQ ID NO:24. Claims 53-58, 71-73, and 86-94 encompass the elected invention.

PCT Rule 13.2 states: Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

This election is made with traverse because the examiner has not, in accordance with Rule 13.2, described how the polypeptide sequences of Group I lack the same or corresponding special technical feature of the nucleic acid molecules of Group II. Instead the examiner appears to have focused on the alleged differences between SEQ ID NO:22 and SEQ ID NO:24 by pointing to the examiner's sequence alignments in Appendices A and B. Office Communication at 3.

//

DOCKET NO.: 27112-14589

PATENT

Application No.: 10/577,742

Office Action Dated: December 16, 2009

Applicants respectfully request prompt examination on the merits. If the examiner believes that a personal communication will expedite prosecution of this application, the examiner is invited to telephone the undersigned at the number provided.

Respectfully submitted,

Date: May 17, 2010

/Kevin Evel-Kabler/
Kevin Evel-Kabler, Reg. No. 63,090
Fenwick & West LLP
801 California Street
Mountain View, CA 94041
Telephone: (415) 875-2352
Facsimile: (650) 938-5200